

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

COMMON CAUSE INDIANA, *et al.*, )  
Plaintiffs, )  
-vs- ) Case No. 1:20-cv-2007-SEB-TAB  
CONNIE LAWSON, in her official )  
capacity as the Indiana Secretary of State, *et al.*, )  
Defendants. )

**PLAINTIFFS' MOTION TO DISMISS**

Plaintiffs, by counsel, hereby move pursuant to Rules 12(h)(3) and 41(a)(2) of the Federal Rules of Civil Procedure to voluntarily dismiss this action without prejudice, and in support state the following:

1. Plaintiffs filed the instant lawsuit challenging under the Fourteenth Amendment, both on its face and as applied during the pandemic, the operation of Indiana's Noon Election Day Receipt Deadline for mailed absentee ballots.
2. On September 29, 2020, this Court granted Plaintiffs' motion for a preliminary injunction. Doc. 29. On October 13, the Seventh Circuit reversed. 977 F.3d 663. The case is now before this Court for final adjudication.
3. Insofar as the relief sought by Plaintiffs was directed to the November 3, 2020 election, which is now concluded, Plaintiffs' as-applied Fourteenth Amendment challenges are moot and should be dismissed without prejudice pursuant to Rule 12(h)(3), as the Court lacks subject matter jurisdiction to entertain moot claims. A dismissal for lack of subject matter jurisdiction (mootness) is a dismissal

without prejudice. *Bernstein v. Bankert*, 702 F.3d 964, 99 (7th Cir. 2012); *Grinnell Select Ins. Co. v. Cook*, 2009 WL 1024587 (C.D. Ill. 2009).

4. While Plaintiffs' facial challenge under the Fourteenth Amendment continues to present a live controversy, Plaintiffs move to voluntarily dismiss that claim. Such a dismissal would also be without prejudice, as the previous rulings in this case were preliminary and thus did not constitute a final adjudication such as would make a "without prejudice" dismissal inappropriate. *Villegas v. Princeton Farms, Inc.*, 893 F.2d 919, 924 (7th Cir. 1990).

WHEREFORE, Plaintiffs respectfully request that the Court grant their motion to dismiss this case without prejudice.

Dated: December 28, 2020

Respectfully submitted,

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